

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
OCTOBER 27, 2011**

PRESENT: Jeffrey Cohen, Chair; Jeffrey Dearing, Vice Chair; Brian Gildea, Clerk; Angelo Colasante; Kenneth Gordon; Carol Amick

ABSENT: Stephen Henning

PETITION #028-11 – CONTINUATION – Lutheran Church of the Savior, 426 Davis Road, seeks to appeal the Building Inspector's decision to require a buffer of trees along property line.

PRESENTATION: Mr. Gildea read the notice of the meeting.

Mr. Cohen introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and ZBA assistant introduced themselves.

Mr. Cohen said that his recollection of the last meeting in July is that the Board allowed a continuation for this application to see whether some resolution could be formed between the Lutheran Church of the Savior and the abutters. He asked the applicant what progress had been made.

Douglas Burns, the applicant for the Lutheran Church of the Savior, greeted the Board and said that they are not opposed to putting in trees as a buffer between the properties, but the Church's biggest concern is that this issue has been ongoing and it may continue to be ongoing. He said this tree line issue has been going on since the addition was built on the Church in 2003, and he would like to have some assurance from the Board that if they plant the trees, this will be the final act that they are required to perform in regards to the site plan for the addition. He explained that the Church has hired an attorney, Douglas Deschenes, and Mr. Deschenes has stated that if they were to appeal the Building Inspector's decision in court, they would prevail. He said that their attorney has advised them that the conditions of the By-Law do not apply to any church under Chapter 40A section 3 of Massachusetts General Law, so any Zoning requirements – including requirements for a buffer between the properties – would be waived. He stated that the Church and the Church's lawyer also believe that any conditions placed on the permit during construction are not to be held in perpetuity, and the fact that the Planning Board's approval was contingent upon a tree line placed between the properties at the time of construction does not mean that it must remain forever.

Mr. Burns concluded that he feels the Building Inspector is, in this instance, mistaken, and the Church should not have been forced to maintain such a tree line after construction was completed. Mr. Burns said what the Church is really asking of the Board is to overrule the finding that they must continuously maintain the tree line forever. He said he would be willing to plant trees as a one-time condition, but he doesn't want to plant trees and then have to replant them again in five or ten or even twenty years.

Mr. Cohen asked whether the Church had had any discussions with the abutters. Mr. Burns said they had not; he explained that what they have done is gone to various nurseries and arborists to see what kinds of trees might work best and last the longest. Mr. Cohen said that when the Church went before the Planning Board in 2003, one of the requirements for developing the property was that a greenbelt between the properties had to be provided. The Bylaw requires that a new greenbelt be provided, or, if the permit-granting authority approves, an existing vegetative buffer can serve as the required greenbelt. Mr. Cohen believes the Planning Board considered the existing buffer as meeting the intent of the Bylaw and saw fit to protect it during construction, which is the reason for the condition in the Site Plan Approval decision. He said he understands that trees can die over time due to soil conditions or other problems, but the intent of the By-Law is that the greenbelt remains. He commented that when a new development comes into Bedford, a greenbelt must be provided, and the logical assumption is that they will be maintained and that they will become thicker and denser over time, thus ensuring an even greater visual screening. He stated that he feels it is incumbent on the Church to maintain that greenbelt, if for no other reason than because it is the intent of the By-Law.

Mr. Gordon said it is unfortunate that the attorney is not present tonight, as he is curious why Mr. Deschenes has advised the Church that the Bedford Zoning By-Law doesn't apply here. Mr. Burns said he asked the attorney not to attend. Mr. Gordon asked why. Mr. Burns replied that having an attorney present for the evening may cost approximately one thousand dollars, which is a lot of money for the Church to spend, especially since he feels that the Board's inevitable decision will be to uphold the Building Inspector's decision.

Mr. Gordon talked more with the applicant about Chapter 40A and the attorney's interpretation of it and Bedford's Zoning By-Law.

Mr. Gordon said it is awkward that the Church is saying that they could bring this to land court because their attorney says they will win, but the attorney is not present to state why. Mr. Dearing said that Chapter 40A allows the *use* of certain institutions – such as schools, daycares, or churches – within a residential neighborhood, but his understanding is that the Zoning By-Law of any town must still be followed. He said it seems clear to him that any buffer or tree line required under the Zoning By-Law is still required.

Mr. Colasante said that when the Board met several months ago, there seemed to be a clear understanding from all involved that the members of the Church were going to talk to the abutters and work with them to come up with a solution. He asked whether the Church contacted the abutters one single time to work out this problem. Mr. Burns said they did not. Mr. Colasante said he is extremely disappointed that the two parties did not get together and work this out. He said that a Church is supposed to be an organization that brings people together, but this Church seems to be pulling the neighborhood apart. He stated that he was truly hoping that the Zoning Board would not have to uphold the Building Inspector's decision and that the two parties could mitigate this themselves.

Mr. Colasante said he was hoping to see a sense of community and town harmony at work here, but the Church chose to engage an attorney instead of its neighbors, which he sees as an insult to the neighborhood and to the Board, and to any sense of closure which may have been reached at the last meeting. He concluded that he is very upset and angry at this situation and, although he is willing to hear from the public on the matter, he is ready anytime for a motion to uphold the Inspector's decision.

Mr. Gordon said he believes the reason that Mr. Colasante is so upset is because, quite simply, the Church did not do what it said it would do; there was a clear agreement at the last meeting that the Church would meet with the neighbors and attempt to work out some sort of understanding, and that agreement was completely ignored.

Mr. Gildea agreed, noting that his recollection of the meeting was that the Board granted a continuation for the specific purpose of allowing the Church and the abutters to work out a plan together. He said that the Church is asking the Board to do something that it cannot do: waive By-Laws that were specifically put in place for situations like this, where zoning districts overlap. He stated that he also believes the intent and purpose of the By-Law is not only to have the tree line there during the construction of the Church addition but always, to serve as a permanent screening. Mr. Gildea also expressed his disappointment that the Church made no attempt to meet with the neighbors as had been promised. Mr. Gildea also suggested that, because the Church didn't follow through with its agreement to meet with its neighbors, it would be hard to accept that if the Board overturned the inspector's decision, the Church would keep to its word and plant any of the trees.

Mr. Burns said he understands the Board's point of view, and he apologized for not speaking directly to his neighbors; he said he has no excuse for not doing that, and he feels bad that he did not. He said that this decision, however, is not his to make; he speaks on behalf of the Church and he must run every decision by the Church Council. He also stated that, if the neighbors are so adamant about having the tree line put back in, they could offer to split the cost.

Mr. Cohen opened the hearing to the public.

Christine Lamb, of 49 Glenridge Drive, said that her property directly abuts the Lutheran Church. She said that with all due respect to Mr. Burns, she no longer believes the statements he makes. She said she is a member of a church as well, and she feels that all churches should be held to a higher standard, both morally and ethically, but this Church is not doing what is right; they hired an attorney instead of talking to the neighbors, and are now threatening to go to land court for something that easily could have been worked out in a friendly manner. She handed out photographs to the Board members that showed what the tree line looked like several years ago when the church addition was first constructed, and photographs that show what it looks like now. She said that it is very disappointing that this situation has been dragging on for so long, and she hopes that it can be brought to an appropriate resolution. She concluded by saying that all the

neighbors in the area maintain their properties beautifully, and she feels it is the responsibility of the Church to maintain the tree line.

Mr. Burns said that the Church always takes pride in the landscaping of its grounds, and he thinks the grounds are very attractive, but everything comes down to the Church having to prioritize where it spends its funds, and this tree line will be a great expense.

Mr. Dearing noted that if the trees had been replaced over the years as they died individually, the cost would not be such a burden for the Church as it is now that it's being done all at once. He added that his interpretation of the By-Law is that the Church does have to maintain the tree line, not only during the construction of the addition but forever, but if the right trees are bought and planted, they will last for decades so it will not be an issue again for forty or fifty years – or more.

Carol Rogers, of 47 Glenridge Drive, explained that she and her husband have lived in their house for many years and have raised their children there. She said that the Church has been a good neighbor for many years but she is disappointed because she doesn't think of them as a good neighbor anymore. She said that she and her husband see headlights washing in at all hours of the night and they see plows parked out back all the time during the winter, and there is no visual screening at all. She commented that she has never had a problem with the Church being there in the residential district but she believes that its abutters have a right to some privacy.

Yolanda Tsang, of 46 Glenridge Drive, said she lives next door to the Lambs, and agrees that the neighbors simply have no privacy. She stated that there is a wide-open view of the Church because there is no screening at all, and she believes there should be.

Mr. Burns said that it is clear from the comments made by the public and the Board members that the Building Inspector's decision will be upheld. He stated that he could either request a withdrawal of his application or have the Board vote to uphold the Building Inspector's decision. He noted that, since both outcomes would be exactly the same – the Church being required to replace the tree line – he would request to withdraw its application.

Mr. Gildea said that if the Church withdraws without prejudice, it is possible for them to come back before the Board any time within the next two years to once again appeal the Building Inspector's decision. He suggested allowing the Church to withdraw with prejudice, so there will be no option for the Church to appeal again within the next two years. After further discussion on this matter, the Board agreed to accept the Applicant's request to withdraw the petition with prejudice.

Mr. Cohen explained to the abutters in attendance that winter is fast approaching, so there may not be any planting of this tree line until the spring. He said he cannot speak for the Building Inspector, but he may not require anything to be done on this project until then. The abutters agreed that they understood this and had no problem with it.

With no further comments or questions from those in attendance, Mr. Cohen closed the public hearing and called for a motion.

MOTION:

Mr. Gildea moved that the Board accept the Applicant's request for a withdrawal with prejudice for the Lutheran Church of the Savior, 426 Davis Road, seeking to appeal the Building Inspector's decision to require a buffer of trees along property line.

Mr. Dearing seconded the motion.

Voting in favor: Cohen, Dearing, Gildea, Colasante, and Gordon

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

BUSINESS MEETING:

Mr. Cohen took attendance for the upcoming Planning Board meeting involving the potential demolition of the Travelodge and proposed new use. As at least three Zoning Board members hoped to attend, Mr. Cohen asked the ZBA assistant to post the meeting as a joint meeting.

MOTION:

Mr. Gildea moved to adjourn the meeting.

Mr. Dearing seconded the motion.

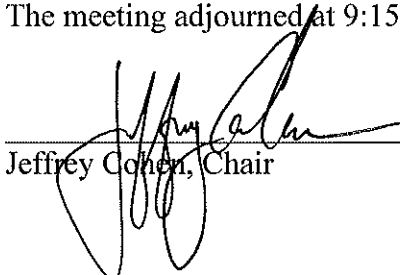
Voting in favor: Cohen, Dearing, Gildea, Colasante, Gordon, and Amick

Voting against: None

Abstained: None

The motion carried unanimously, 6-0-0.

The meeting adjourned at 9:15 PM.


Jeffrey Cohen, Chair

12/8/11
Date

Respectfully Submitted,

Scott Gould
ZBA Assistant